

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ELECTRONIC FRONTIER
FOUNDATION,**

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
JUSTICE,**

Defendant.

Civil Action No. 07-0656 (JDB)

ORDER

Before the Court is [40] the Department of Justice's motion for summary judgment. The Electronic Frontier Foundation has indicated that it does not oppose that motion, with one exception. See Pl.'s Mem. in Supp. of Cross-Motion for Summ. J. ("Pl.'s Mem.") [Docket Entry 43], at 1. That exception is the Department's "continued withholding of Intelligence Oversight Board Case Numbers" under exemption two of the Freedom of Information Act, 5 U.S.C. § 552(b)(2). Id. The Foundation cross-moves for partial summary judgment on that issue. But the Department is not withholding Intelligence Oversight Board Case Numbers under exemption two. Indeed, in its own motion for summary judgment, the Department asserted that it was no longer withholding the Case Numbers at all, and would be releasing that information to the Foundation. See Def.'s Mem. in Supp. of Mot. for Summ. J. [Docket Entry 40], at 17 n.12.¹ And

¹ In its cross-motion for summary judgment, the Foundation indicated that it believed the Department of Justice's decision to release the Intelligence Oversight Board Case Numbers extended to all documents, not only those "contained in the representative sample of documents designated by the parties." Pl.'s Mem. at 4. The Department concurred in this assessment. See Def.'s Reply in Supp. of Mot. for Summ. J. [Docket Entry 45], at 2; see also Bonner v. Dep't of State, 928 F.2d 1148, 1152 (D.C. Cir. 1991) (documents in a representative sample "count not

the Department has now done so. See Def.'s Status Report [Docket Entry 49], at 1 ("DOJ hereby reports that it has completed this review and released to plaintiff Electronic Frontier Foundation . . . [Intelligence Oversight Board] Case Numbers . . ."). Because the Department voluntarily agreed to release the Case Numbers before the Foundation filed its cross-motion for partial summary judgment requesting the same action, there is no basis on which the grant the Foundation's cross-motion. Accordingly, it is hereby

ORDERED that the Department of Justice's motion for summary judgment is **GRANTED**; it is further

ORDERED that the Electronic Frontier Foundation's cross-motion for partial summary judgment is **DENIED as moot**; and it is further

ORDERED that this case is **DISMISSED**.

SO ORDERED.

/s/ John D. Bates
JOHN D. BATES
United States District Judge

Dated: May 25, 2010

simply for themselves, but for presumably similar non-sample documents still withheld").